

VIA FACSIMILE TRANSMISSION - OFFICIAL
To Office of Petitions - Fax Number 703-308-6916
September 28, 2003

IN THE UNITED STATES
PATENT AND TRADEMARK OFFICE

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PETITIONS OFFICE

TO: **OFFICE OF PETITIONS**
FAX NO.: (703) 308-6916
U.S. PATENT AND TRADEMARK OFFICE

In re application of: Harley Kent Heinrich et al. Examiner: William L. Bangachon
Serial Number: 09/382,382 Art Unit: 2635
Filed: 08/24/1999
For: "Radio Frequency Identification System With Write Broadcast Capability"
(Attorney Docket YO995-218)
Allowed: 07/01/2003

**AFFIDAVIT OF JOHN H. SHERMAN IN SUPPORT OF
PETITION UNDER 37 CFR 1.47(a) AND MPEP 409.03(a)**

The undersigned attorney of record hereby declares as follows.

The Notice of Allowance of 07/01/2003 in the present application, Paper No. 15, in Section 3 at Pages 2-3, requires a new Declaration. The new Declaration signed by six of the seven inventors was sent by facsimile transmission on 9/28/2003, along with a Petition Under 37 CFR 1.47(a) and MPEP 409.03(a).

CERTIFICATION OF FACSIMILE TRANSMISSION

I hereby certify that this Affidavit of John H. Sherman in Support of Petition Under 37 CFR 1.47(a) and MPEP 409.03(a) of four pages, and referenced Exhibits A-E (as listed under Enclosures at page 4 hereof), are being facsimile transmitted to the U.S. Patent and Trademark Office on the date shown below.

September 28, 2003
Date


John H. Sherman, Reg. 16,909

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The present application was filed as a continuation application, and only original claims as originally filed in the parent application filed 08/09/1996 have been allowed in the present application. See the Applicant's argument in the Amendment and Response of 12/20/2002 that no CIP declaration was required in these circumstances, reading as follows:

"With respect to section 2 of the Official action, Applicant respectfully submits that the present claims are original claims of the parent application of which this is a continuation. A CIP discloses and claims the early subject matter, while here the present inventive entity can only claim subject matter filed Aug. 9, 1996, for which the present inventors clearly recognize their duty to advise of prior art prior to the filing date of August 9, 1996 by their original Declaration. The different inventive entity including inventor Chan could submit a CIP Declaration, since then the claims could be either based on the 9/9/1994 filing date or the 8/9/1996 filing date since the inventive entity would include all the 9/9/1994 inventors."

The undersigned decided on about August 28, 2003, that instead of filing a CIP with all eight inventors at this time, to file an RCE, and to try to locate the seven inventors, and to obtain execution of the required new Declaration. (An e-mail of 08/27/2003 shows exploration of optical scanning of the text of the parent specification to generate an electronic version, and causes the undersigned to conclude that a CIP filing was being contemplated at that time with all eight inventors including inventor Shun Shing Chan who is named in the grandparent application No. 08/303,965 filed 09/09/1994. At about this time, it is believed that the undersigned realized that the present case had a large number of independent claims – sixteen – and that an RCE would be worthwhile from this standpoint – see Exhibit A1, the top message.)

As shown by enclosed Exhibits A1-A2, a print of an e-mail of 09/01/2003 to inventor Thomas A. Cofino, at that time, a new Declaration by the seven inventors was being sought, as well as eventually a CIP declaration by all eight inventors.

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As shown by Exhibit B1-B2, Dr. Cesar returned a copy of the undersigned's letter to him of 09/06/2003, which was postmarked on 09/15/2003, and received by the undersigned on about 09/18/2003.

Exhibit C is a print of a third e-mail attempt of 09/24/2003 directed to Dr. Cesar (and enclosing a second attempted e-mail of 09/19/2003 7:04 PM, Exhibits D2-D3, to Dr. Cesar which omitted the attachment of the first attempt - the published application 20020118097 based on the present case – and apparently was also successfully delivered per Exhibit D4) – which third attempt was apparently successfully delivered per Exhibit C4 .

After various attempts to locate Christian Lenz Cesar who has not signed the enclosed Declaration, a letter was sent to Mr. Cesar on 09/06/2003 at the address shown on the original fully executed Declaration. A return copy (Exhibit B) of the letter (returned by Dr. Cesar as requested) was received on September 18, 2003, showing Dr. Cesar's post office address to be the one to which the letter was sent, and giving Dr. Cesar's e-mail address. An e-mail was sent to Dr. Cesar on 09/19/2003 11:22 AM, advising him that the signed Declaration was "due in the Patent Office by October 1, 2003", and at least later e-mails of 09/19/2003 7:04 PM (Exhibits D2-D4) and of 09/24/2003 (Exhibits C1-C4) apparently had successful delivery, and gave the same deadline of October 1, 2003 (Exhibit D3, top line, and Exhibit C1, second paragraph).

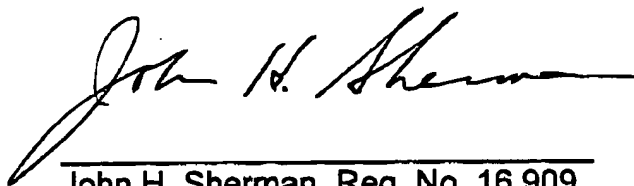
As shown by Exhibits D1, D8, D9 and D10, the complete application as filed, and the Declaration, were sent to Dr. Cesar at his post office address (P.O. Box 642, Shrub Oak, NY 10588) by Express Mail (Post Office to Addressee service) on 09/20/2003 11:43 AM. The United States Postal Service reported on 09/24/2003 (Exhibit D10), that delivery had been unsuccessful. Accordingly, an investigation was begun (Exhibit E of 09/24/2003) concerning the address in New Jersey that Dr. Cesar had given to IBM at his leaving IBM (which was believed by the undersigned to be in about June of 2002). This led to the finding that Dr. Cesar was traveling in France and was not expected back for three weeks, and had not left an itinerary with the party we were able to contact. Accordingly, it is concluded that Dr. Cesar is unavailable to sign a new Declaration by the deadline of October 1, 2003 for payment of the issue fee.

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Under all the circumstances, Applicant plans to file an RCE and an IDS, and to add further claims to the present application by October 1, 2003, and this Petition is submitted to assure that the planned RCE will be a full response to the Notice of Allowance, Paper No. 15, dated 07/01/2003.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001 and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Respectfully,



John H. Sherman, Reg. No. 16,909
c/o Legal Department
Intermec Technologies Corporation
550 Second Street, SE
Cedar Rapids, IA 52401

Enclosures: Exhibit A (Pages A1-A7)

Exhibit B (Pages B1-B2)

Exhibit C (Pages C1-C4)

Exhibit D (Pages D1-D10)

Exhibit E (One Page)